

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Ruile, et al.	Art Unit :	2817
Patent No. :	7,459,991	Examiner :	Alan Wong
Issue Date :	December 2, 2008	Conf. No. :	2005
Serial No. :	10/542,970		
Filed :	August 24, 2005		
Title :	SAW COMPONENT HAVING AN IMPROVED TEMPERATURE COEFFICIENT		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

Applicants hereby petition for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed November 12, 2008 for the above-referenced application indicates that the Patent Term Adjustment at issuance is 526 days. Reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 526 days to 610 days, and to increase Total PTA from 526 to 610 days, is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) **The PTO mailed a delayed 14-month first non-final Office Action on March 17, 2008, thereby according a PTO Delay of 510 days. Applicants do not dispute herein this patent term adjustment calculation for this PTO “A Delay.”**
- 2) **The PTO mailed a delayed Notice of Allowance on September 24, 2008, thereby according a PTO Delay of 16 days. Applicants do not dispute herein this patent term adjustment calculation for this PTO “A Delay.”**
- 3) **The application was filed on August 24, 2005 and the patent issued on December 2, 2008, more than three years later. No PTO delay were**

calculated for issuance of the patent after three years from filing. Applicants respectfully submit that the PTO's calculation of this PTO "B Delay" contains an error and that the correct PTO Delay for issuance beyond three years from filing is 84 days, as outlined further below.

REMARKS

Applicants have calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can "overlap" is if they occur on the same day, and if an "A delay" occurs on one calendar day and a "B delay" occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. "A Delays" are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. "B Delays" are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The *Wyeth* court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years," and that "B delay" begins once the PTO has failed to issue a patent within three years, not before.

In the current PTA calculation, the Office has only given credit for the larger of "A Delay" or "B Delay," rather than the combined sum of "A Delay" and "B Delay" (which does not include any days after three years from filing where "A" and "B" delays overlap).

In this patent, "A Delay" should be calculated as 526 days, and "B Delay" should be calculated as 100 days. There is a 16 day overlap. Thus, the total PTO Delay should be calculated as 610 days.

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In consideration of the events described above, Applicants believe the PTA calculation of 526 days is incorrect. As such, Applicants respectfully request reconsideration of the patent term adjustment in the following manner:

- 1) Total PTO Delay should be calculated as 610 days;
- 2) Total Applicant Delay should be calculated as 0 days; and
- 3) Total PTA should be calculated as 610 days.

Applicants note that this patent **is not** subject to a terminal disclaimer.

Please apply the fee of \$200 required under 37 C.F.R. § 1.18(e) and any other required charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

January 20, 2009
Date: _____

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